

## Standard Terms and Conditions of Purchase

### I. General

Unless agreed otherwise in writing between the Tognum Group company concluding the agreement (named in the footer hereof) (hereinafter referred to as "We", "Us" or "Our") and the contractor (hereinafter referred to as the "Contractor"), these Standard Terms and Conditions of Purchase shall apply to all goods and services ordered by Us. These Standard Terms and Conditions of Purchase shall apply exclusively, even if We accept goods/services without reservation, despite being aware of terms of the Contractor which are inconsistent or which deviate from these Standard Terms and Conditions of Purchase.

### II. Conclusion of agreement

1. We are bound by written orders only.
2. The Contractor shall confirm acceptance of Our order in writing without undue delay (using the order confirmation attached to the order form if available) unless We waive this requirement. If the Contractor's order confirmation deviates from Our order, We will only be bound by the order if We have consented to the deviation in writing. The acceptance of goods/services or payment for same shall not constitute consent.
3. If the Contractor fails to accept the order within 14 days, We may revoke the order.
4. Agreements for goods/services and any amendments or supplements thereto must be executed in writing. Oral collateral agreements shall not be recognized.

### III. Modifications

1. We may, to the extent reasonable for the Contractor, request modifications to the design and execution of the goods/services. The consequences of any modifications, particularly any additional or reduced costs and the impact on delivery/performance dates, shall be the subject of a reasonable, mutually agreed arrangement.
2. The Contractor may modify its goods/services from a previous order of the same type or from a specification in the current order, provided the changes are for the purpose of improvement and We have given Our written consent. If a change affects the logistical requirements of an end user, the Contractor shall, in cases where the modification is consented to, take such requirements into account as well. The Contractor is responsible for ensuring that any modified goods/services are also fit and proper for the intended use stipulated by Us.

### IV. Labeling requirements

1. The Contractor shall quote the order number and item or material number in the order confirmation (where an order confirmation is agreed) and in all other written correspondence.
2. A delivery note shall be attached in duplicate on the top of each consignment and must state, in addition to the aforementioned information, the date of dispatch, the type of packaging, a description of the goods, the quantity and weight of the consignment (gross and net weight) as well as the delivery address (site and unloading area). Invoices shall not constitute delivery notes.
3. In addition to the order number and item or material number, invoices must include a goods description, the quantity, the price per unit and number and date of the delivery note. Any value added tax included in the price must be shown as a separate item. Invoices may relate to no more than one order.
4. The Contractor shall bear any costs incurred as a result of failure to comply with this provision.

### V. Provision of materials, provided documents, etc., confidentiality

1. Materials or parts provided by Us shall remain Our sole property unless mandatory statutory provisions provide otherwise (§§ 946 to 948 of the German Civil Code (Bürgerliches Gesetzbuch, "BGB")). Processing or altering by the Contractor within the meaning of § 950 BGB shall be performed on Our behalf.

2. Where the Contractor receives drawings, models, matrices, tools, templates, samples or similar items for the purpose of executing the order, such items shall remain Our sole property. Furthermore, where such items have been developed by the Contractor with substantial assistance from Us (tests, etc.), or have been manufactured by the Contractor according to Our instructions, they may only be used for the purposes of the order and, if they are Our sole property, shall be returned to Us on request, freight paid, without undue delay. No lien may be exercised in respect of such items, except in the case of undisputed claims or claims that have been confirmed by a final and binding judgment. The Contractor shall keep and carefully store all items of this nature in operating condition.
3. If the Contractor has developed and/or manufactured parts or other items (including software, etc.) for Us using Our specifications or documentation, the Contractor may not supply such parts or items to third parties or use them in the manufacture of products for third parties without Our written consent.
4. Any and all commercial/technical information which is not common knowledge and of which the Contractor becomes aware in the course of Our business relationship, particularly the information referred to in paragraphs 2 and 3 of this clause, shall constitute Our trade secrets and must therefore be treated as confidential. If trade secrets are disclosed in the individual case, this only being permitted with Our written consent, the Contractor shall similarly impose the obligations under this clause on the relevant third party.

### VI. Freight and packaging

In the absence of any specific terms, the supplier or Contractor shall choose the most economic form of transportation or packaging. The packaging must be appropriate in view of the nature of the consigned goods, the means of transport and the route so as to ensure that it is able to withstand all the demands of transportation.

### VII. Delivery/performance dates

1. Agreed dates and periods are binding. The date on which the goods arrive at the place of performance shall be controlling for determining compliance with delivery dates/periods.
2. The relevant statutory provisions shall apply if delivery/performance dates are not complied with. We may also partially rescind the agreement in respect of the goods/services not provided in due time. For the purposes of determining whether a default in performance exists, it is irrelevant whether the Contractor receives its own supplies on time.
3. In the event of default, We may charge a penalty of 0.5%, but no more than 5%, of the order value for each week or part thereof by which the agreed delivery/performance date is exceeded. Forfeited penalties may be claimed right up until final payment.
4. Partial delivery/performance shall be rendered if specifically agreed, but is not otherwise permitted. If partial or successive delivery/performance is agreed, We may, to the extent reasonable, postpone the dates and volume of delivery/performance.
5. The Contractor shall notify Us in writing without undue delay of foreseeable delays in the provision of goods or services and advise Us of the anticipated duration of the delay.
6. Where delays are attributable to *force majeure*, the Contractor shall provide evidence of the existence of *force majeure*. The Contractor shall, at its own expense, do everything in its power to perform the agreement on time, despite the existence of *force majeure*. If it is highly likely that a delay will continue for more than one month, particularly because the Contractor notifies Us that it will not be able to deliver any earlier than that, We may (partially) rescind the agreement.
7. We may postpone the agreed dates for the delivery of goods/services by the Contractor by up to six months if the anticipated need for the goods/services is deferred as a result of strikes or disruptions to Our operations of any other kind. Any such postponement shall not give rise to any claims on the part of the Con-



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tractor. The foregoing shall not affect the right of rescission under clause XIII.

- To the extent reasonable in the individual case, We will accept early delivery/performance. However, the agreed periods for payment shall still commence on the previously agreed delivery/performance date or subsequent invoice date.

### VIII. Prices

The agreed prices are fixed prices and include all incidental costs incurred up to the agreed unloading point (with the exception of value added tax at the applicable statutory rate). Where it has been agreed that a consignment shall be dispatched at Our risk, the prices shall not include any transport insurance or insurance against damage, as We will cover these risks and hereby waive any such insurance. If the Contractor reduces its prices, the possibility of a price reduction for goods/services not yet provided shall be discussed.

### IX. Payment

- Unless otherwise agreed, payment shall be due, at Our option, at a 2% discount within 60 days of receiving the goods/services and the invoice, or in full (net) within 90 days.
- We may render payment in the form of Our choice, particularly including payment by check. The date of payment shall be the date on which the payment was sent. Cash on delivery arrangements are not permitted. We shall not be deemed in default of payment unless We have already received a written default notice.
- We may pay in euros or offset an amount in euros in order to satisfy claims denominated in a currency other than euros. The relevant exchange rate shall be the exchange rate applicable in the place of payment at the time of payment.
- We have recourse to the statutory rights of set-off and rights to withhold performance. If a party becomes insolvent pursuant to § 94 of the German Insolvency Code (*Insolvenzordnung*), it is agreed that the accrued claims of the other party shall fall due upon the commencement of insolvency proceedings. If a court orders the institution of provisional insolvency proceedings, the claims shall fall due when the court order is issued.

### X. Transfer of risk / reservation of title

- Deliveries must comply with the agreed terms of delivery (in accordance with the relevant Incoterms, as amended time to time).
- For delivery-only orders, the risk of performance and payment shall pass in accordance with the agreed terms of delivery, or alternatively upon receipt of the goods at the place of performance. For orders involving delivery for installation or assembly and for orders involving other services, the risk shall pass upon acceptance at the place of installation/performance.
- The Contractor may reserve title to its delivered goods until the consignment has been paid for in full. However, We may continue to use, process and on-supply the goods in accordance with their intended use. We also agree to the pre-assignment of Our claims against Our customers up to the value of the Contractor's claim against Us. However, any disclosure of the assignment, including information as to the value of the Contractor's claim against Us, is subject to Our consent, and is only permitted if We are in default and payment is still outstanding even after a reasonable grace period for payment has expired.

### XI. Warranty

- The Contractor shall provide the goods and services free of defects in quality and defects in title. In particular, the most suitable and sound materials must be used, any statutory/regulatory requirements as of the date of delivery/performance must be met, the goods/services must be of the agreed condition or quality or, in the absence of any such agreement, the condition or quality customary in the industry, and they must be state-of-the-art as of the date of contract performance, even if the latest technological developments have not yet been incorporated in the technical norms and stan-

dards applicable to the Contractor's goods/services at the place of performance. Materials supplied for MTU motors are governed by quality standard MTQ 5003, and quality standard MTQ 5011 applies to materials supplied for MTU motors of the 1600 series. Both standards are available online at [www.mtu-online.com](http://www.mtu-online.com) (under purchasing/downloads).

- The Contractor shall, at its own expense and prior to performance, conduct an acceptance test and unit testing, and in so doing shall observe any specific quality requirements specified in the order. The quality control and incoming goods inspection conducted by Us shall not release the Contractor from its contractual obligations. We shall conduct an incoming goods inspection to check for any externally visible damage and externally visible discrepancies with regard to the description and quantity of the goods. We will report any such defects without undue delay. We will also report other defects as soon as they are discovered in the ordinary course of business. To this extent the Contractor shall waive the defense of delayed notification of defects.
- We have recourse to the full range of statutory claims based on defects. Irrespective of this, We may ask the Contractor to render subsequent performance (*Nacherfüllung*), and in this regard may elect to have the defect repaired or a replacement delivered/manufactured. The Contractor shall render subsequent performance without undue delay if We so request. If it later emerges that no defect existed, the Contractor may claim reimbursement of the expenses incurred in connection with subsequent performance.
- The Contractor is liable for any defects in title, including the infringement of third party proprietary rights, irrespective of whether We knew of such defects, and the Contractor shall indemnify Us against any potential third party claims. The foregoing shall not apply if Our drawings, samples or other specifications infringe proprietary rights.
- The Contractor shall cure all defects arising and reported during the limitations period for claims based on defects. The limitations period for claims based on a specific defect shall be tolled when We report the defect in writing, and shall remain tolled until the defect is cured. However, any such tolling shall end three months after the receipt of a written notice stating that the defect has been cured or does not exist.
- Unless otherwise agreed, claims based on defects shall lapse when the statutory limitations period expires. If a delivered item is used in products We supply to Our customers, the statutory limitations period shall commence when Our customer puts Our product into operation, however no later than 12 months after the risk for the delivered item has passed to Us. The limitations period shall commence anew for exchanged or replaced parts.

### XII. Product liability

- Where the Contractor is liable for loss or damage caused by its goods/services, it shall, on first demand, indemnify Us against damages claims brought by third parties, provided the cause of the loss or damage is within its sphere of organization and control and the Contractor itself is liable as against third parties.
- In this context, the Contractor shall also reimburse any expenses pursuant to §§ 683, 670 BGB arising out of or in connection with any recall conducted by Us, unless such claim already exists under §§ 830, 840 BGB in conjunction with §§ 426, 254 BGB. If, as a result of an error caused by the Contractor, third parties sue Us on product liability grounds or We are required under the regulations governing the relationship between Us and Our customers to recall products or label them with warnings, the Contractor shall indemnify Us against all third party claims, bear all of the resulting costs, and otherwise use its best efforts to assist Us in defending against the claim, in particular by producing all expedient information and documents. To the extent possible and reasonable, We will inform the Contractor and give it an opportunity to comment on the terms and scope of any recalls to be conducted.

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3. The Contractor shall observe its products for their entire normal lifespan and notify Us in writing without undue delay of any product hazards of which it becomes aware.
4. The Contractor shall maintain product liability insurance. Any further damages claims on Our part shall remain unaffected.

### XIII. Rescission, termination

1. Without prejudice to any other claims, We have recourse to the full range of statutory rights of rescission and termination.
2. In particular, We may rescind the agreement in whole or in part if:
  - a) We have substantially less demand as a result of *force majeure*, industrial disputes, interruptions to operations for which We are not responsible, riots and unrest, regulatory action or unavoidable events; or
  - b) the goods to be delivered are intended for on-supply to a third party and the agreement with such third party fails to be performed for reasons for which We are not responsible, in particular if insolvency or similar proceedings are instituted against the third party, or the third party otherwise suffers financial collapse or discontinues operations.
3. We are further entitled to terminate the agreement effective immediately if:
  - a) the Contractor is responsible for the breach of a material contractual obligation;
  - b) the Contractor discontinues its operations or threatens to do so; or
  - c) an application to institute insolvency proceedings is filed against the Contractor, or We receive a written credit report indicating that the Contractor is not creditworthy.
4. We may, on two weeks' notice, terminate continuing obligations at any time even where none of the aforementioned grounds exist.
5. In the event of termination pursuant to § 649 BGB, We will pay for completed parts of goods and services that are free of defects on a *pro rata* basis. We will pay for uncompleted parts in accordance with the terms of § 649 BGB, however subject to a maximum profit of 4%.

### XIV. Subcontractors

The Contractor must obtain Our prior written consent before engaging or changing subcontractors or using third parties or temporary staff, unless such staff performs incidental functions. The Contractor shall otherwise impose the same obligations on any subcontractors as those it has assumed in its relationship with Us. The Contractor shall otherwise be liable for the negligence of its subcontractors/suppliers as it would be for its own negligence.

### XV. Stocks / product availability

The Contractor guarantees to keep its goods/services in stock/have them available for their normal lifespan, but for at least 10 years from the date of performance. Even in cases where such an obligation has expired in respect of goods/services provided to Us, the Contractor shall give Us timely notice of any intended discontinuation of goods/services so as to ensure that parts can still be delivered for Us to hold in stock.

### XVI. Assignment of claims

The assignment of claims under the agreement is subject to Our written approval.

### XVII. Third party rights

The Contractor shall indemnify Us against any and all claims arising from the infringement of intellectual property rights, copyright or other rights asserted by third parties as a result of the use of the delivered goods/services or parts thereof.

### XVIII. Data protection

We may store, transmit, modify and delete personal information about the Contractor in accordance with the provisions of the Federal Data Protection Act (*Bundesdatenschutzgesetz*), provided this is necessary in connection with executing the agreement.

### XIX. Declaration of origin

To the extent that a declaration of origin is necessary in order to obtain tariff preferences, the Contractor shall provide such declaration in a timely manner in the correct and complete form and using the prescribed wording, with the exact goods description matching that of Our, own, and including the item number, if available.

### XX. Foreign trade law

The Contractor will advise Us upon conclusion of the agreement if export of the Contractor's goods or services is precluded or subject to approval under the applicable export regulations of the Federal Republic of Germany or the European Union. The Contractor shall compensate for any loss or damage sustained by Us as a result of any breach of this notification requirement.

### XXI. Occupational health and safety and environmental protection, REACH Regulation

1. The Contractor shall provide all of its goods and services in accordance with all applicable occupational health and safety and environmental protection regulations laid down by statute, government agencies or trade associations, and in accordance with the MTU "Safety Regulations for External Companies" as applicable at the time the goods or services are provided, which are available online at [www.mtu-online.com](http://www.mtu-online.com) (under purchasing/downloads), and having reasonable regard to environmental concerns. The Contractor shall notify Us in writing without undue delay if it has any occupational health and safety or environmental concerns in relation to the manner of execution requested by Us.
2. a) When making deliveries to Us, the Contractor undertakes as a material contractual obligation to comply with all rules and regulations and to take all action necessary under the REACH Regulation (EC Regulation No. 1907/2006) as applicable on the date of delivery.
  - b) If the Contractor's registered office is outside the European Union and the Contractor itself is not an importer of the delivery item, the Contractor shall, as a material contractual obligation, provide Us with all information necessary for any notification, registration or maintenance of the authorization as specified in the REACH Regulation as applicable at the time of delivery, and shall otherwise reasonably assist Us in connection with any notification, registration or maintenance of the authorization. In particular, where the products to be delivered contain one or more substances in a concentration of more than 0.1% weight by weight (w/w), and such substances meet the criteria laid down in Article 57 of the REACH Regulation and have been identified in accordance with Article 59(1) of the REACH Regulation, the Contractor shall provide sufficient information to ensure their safe use and, if applicable, to allow a notification to be filed with the ECHA.
  - c) If the Contractor breaches the aforementioned obligations, We may claim damages and rescind the agreement. The Contractor shall otherwise, on first demand, indemnify Us against all third party claims arising as a result of the Contractor's breach of the aforementioned obligations. The claim for damages/indemnification shall also cover all of Our expenses such as, in particular, legal defense and administrative costs and all costs associated with any necessary replacement products. If the Contractor's registered office is outside the European Union and the Contractor is unable to notify, register or maintain the authorization for its delivery item or is unable to do so on reasonable terms, We may rescind the agreement without being liable for damages.



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### XXII. Compliance

The Contractor shall observe all applicable legislation in the relevant jurisdiction(s) and shall not, either passively or actively, directly or indirectly commit an act or omission which could, in particular, result in criminal prosecution for the granting of an advantage, bribery, fraud, breach of fiduciary duty, competition law violations or insolvency offences. If the Contractor breaches this obligation, We may, to the extent reasonable, rescind or terminate all agreements with the Contractor without notice and break off the business relationship and claim damages.

### XXIII. Severability

If any provision of these Standard Terms and Conditions of Purchase is or becomes invalid, in whole or in part, this shall not affect the validity of the remaining terms. If an invalid clause or part thereof cannot be substituted by reference to suppletive law, We and the Contractor shall substitute the invalid term or the invalid part thereof with a term that most closely reflects both parties' interests as manifested in these Standard Terms and Conditions of Purchase.

### XXII. Place of performance, jurisdiction, governing law

1. Unless otherwise provided in the order, the place of performance shall be the location of Our registered office.
2. Where the Contractor is a merchant (*Kaufmann*), the courts where our registered office is located shall have jurisdiction over all disputes arising under this agreement. However, We may also file suit against the Contractor in the courts in its country of domicile.
3. All legal dealings between Us and the Contractor are governed by the laws of the Federal Republic of Germany, subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Current as of November 2010